

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date:	November 1, 2022	<input checked="" type="checkbox"/> Consent	<input type="checkbox"/> Regular
		<input type="checkbox"/> Ordinance	<input type="checkbox"/> Public Hearing
Department:	Engineering & Public Works		
Submitted By:	Engineering & Public Works		
Submitted For:	Traffic Division		

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to:

A) **approve** an Assignment, Assumption, and Consent Agreement (Assignment) between Highland Dunes Associates Property, LLC (Highland Dunes), Lennar Homes, LLC (Lennar) and Palm Beach County for the Arden Amended Proportionate Share Agreement (Amended Prop Share).

SUMMARY: On October 29, 2020, Palm Beach County and Highland Dunes entered into a Proportionate Share Agreement (R2021-0020), as amended on December 21, 2021 (R2022-0290). The dollar value associated with (R2022-0290) is \$15,828,921. On April 7, 2022, AG EHC II (LEN) Multistate 2, LLC (AG) acquired the property from Highland Dunes in its capacity as a land bank for Lennar. Approval of the Assignment will transfer the rights and obligations under the Proportionate Share Agreement, as amended, from Highland Dunes to Lennar. Pursuant to agreements with AG, Lennar is required to pay and perform all obligations of the owner of the property on behalf of AG, and is therefore the assignee for the Assignment.


Per Resolution R2016-0125, the Board of County Commissioners (BCC) delegated authority to the County Administrator to execute Proportionate Share Agreements on behalf of the BCC.

District 6 (SAS)

Background and Justification: The Engineering and Public Works Department recommends the approval of the Assignment, and the adoption of the Resolution. Assignments that substantially differ from **Exhibit A** to the Resolution will require BCC approval.

Attachments:

1. Location Map
2. Assignment, Assumption, and Consent Agreement with Exhibit A (3)

Recommended By:  Date: 10/15/2022

County Engineer

Approved By:  Date: 10/18/22

Assistant County Administrator

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2023	2024	2025	2026	2027
Capital Expenditures	-0-	-0-	-0-	-0-	-0-
Operating Costs	-0-	-0-	-0-	-0-	-0-
External Revenues	-0-	-0-	-0-	-0-	-0-
Program Income (County)	-0-	-0-	-0-	-0-	-0-
In-Kind Match (County)	-0-	-0-	-0-	-0-	-0-
NET FISCAL IMPACT	-0-	-0-	-0-	-0-	-0-
# ADDITIONAL FTE					
POSITIONS (Cumulative)	-0-	-0-	-0-	-0-	-0-

Is Item Included in Current Budget? Yes No

Does this item include the use of federal funds? Yes No

Budget Account No:

Fund Dept Unit Object

**This item has no fiscal impact. The purpose of the assignment is to transfer the rights and obligations under the Proportionate Share Agreement from Highland Dunes to Lennar.

C. Departmental Fiscal Review:



III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Dev. and Control Comments:

Lisa Mante 10/17/2022
OFMB CA 10/17
DR 10/17

Ann J. [Signature] 10/17/22
Contract Dev. and Control

B. Approved as to Form and Legal Sufficiency:

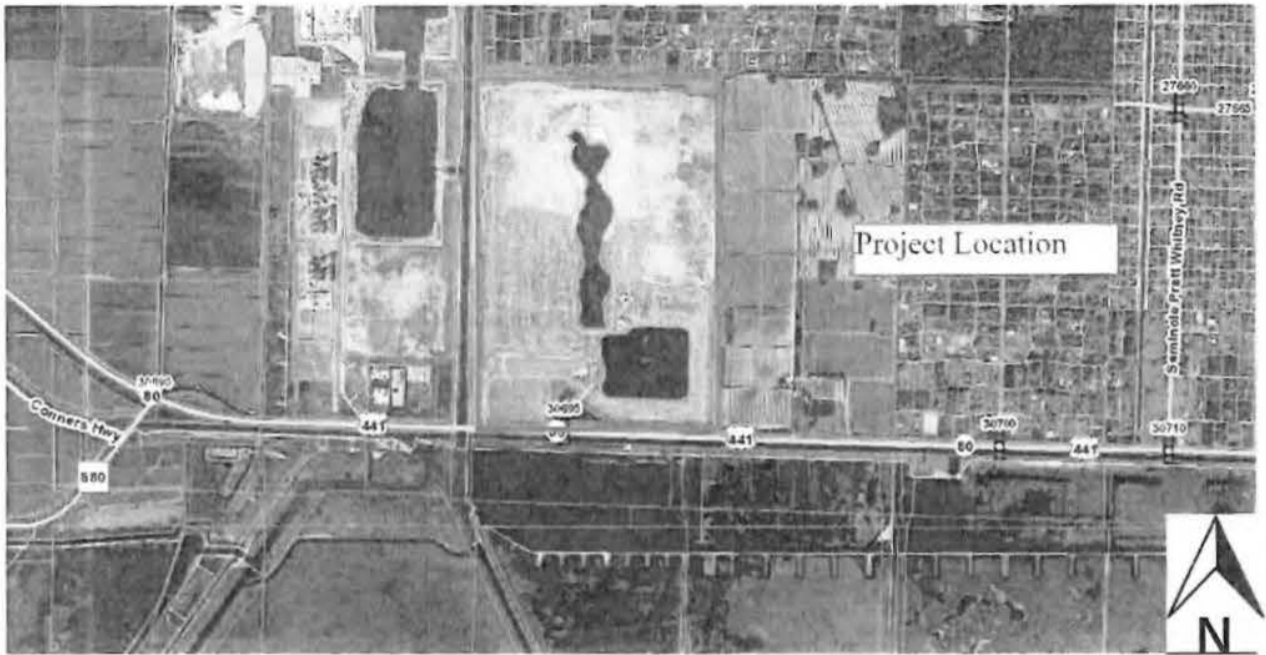
[Signature] 10/18/22
Assistant County Attorney

fill in dates marked by red tabs

C. Other Department Review:

Department Director

This summary is not to be used as a basis for payment.



Project Name: Arden PUD

Impact Fee Zone: 3

**ASSIGNMENT, ASSUMPTION AND CONSENT AGREEMENT IN
CONNECTION WITH AMENDED PROPORTIONATE SHARE AGREEMENT**

THIS ASSIGNMENT, ASSUMPTION AND CONSENT AGREEMENT IN CONNECTION WITH AMENDED PROPORTIONATE SHARE AGREEMENT (“Assignment”) is made as of this _____ day of _____ 2022, by and between HIGHLAND DUNES ASSOCIATES PROPERTY, LLC, a Delaware limited liability company, having an address of 500 Boylston Street, Suite 2010, Boston, MA, 02116 (“Assignor”), LENNAR HOMES, LLC, a Florida limited liability company, with an address of 700 NW 107th Avenue, Suite 400, Miami, FL, 33172 (“Assignee”), and PALM BEACH COUNTY, a political subdivision of the State of Florida, by and through its Board of County Commissioners (“County”).

WHEREAS, Assignor and County entered into that certain Amended Proportionate Share Agreement, dated December 21, 2021 (R2022-0290) (“**Agreement**”);

WHEREAS, On April 7, 2022 AG EHC II (LEN) MULTI STATE 2, LLC (“**AG**”) acquired the property described on **Exhibit “A”** attached hereto (“**Property**”);

WHEREAS, pursuant to agreements (“**Land Bank Agreements**”) with AG, Assignee is required to pay and perform all obligations of the owner of the Property, subject to and in accordance with the terms of such Land Bank Agreements;

WHEREAS, pursuant to this Assignment, Assignor has agreed to assign and deliver to Assignee, and Assignee has agreed to accept and assume from Assignor, the Agreement, including all rights, claims, interests, and obligations with respect thereto; and

WHEREAS, the County has agreed and consented to the assignment of the Agreement according to the terms and conditions set forth herein by its execution of this Assignment.

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

Section 1. Assignment and Effective Date. Assignor hereby conveys, transfers, and assigns its rights, title, and interest in, to, and under the Agreement to Assignee, as of _____ day of _____, 2022 (hereinafter the “**Effective Date**”), including all of Assignor’s rights and obligations, and Assignee hereby assumes all of Assignor’s rights and obligations, in, to and under the Agreement with County, subject to the County’s permission.

Section 2. Assignee’s Acceptance and Assumption. Assignee hereby accepts the assignment to it of Assignor’s rights, title and interest in, to, and under the Agreement and hereby expressly assumes the performance of each of the terms, conditions, covenants, obligations, liabilities and duties of the Assignor under the Agreement, effective as of and beginning on, the Effective Date (and not the result of a violation, breach, or failure to perform

occurring prior to the Effective Date of this Assignment) and Assignee hereby assumes and agrees to pay all debts, obligations, and liabilities of Assignor under the Agreement that accrue on or after the Effective Date of this Assignment (and not the result of a violation, breach, or failure to perform occurring prior to the Effective Date of this Assignment). Assignee shall assume all responsibility for any warranty or guarantee under the Agreement which assumption shall include the guarantee or warranty of the performance of the Agreement in full, regardless of the date Assignee began performance.

Section 3. No Waiver or Release. Notwithstanding any other clause or provision in this Assignment, this Assignment is not intended to act as a release, waiver or relinquishment of any claims, demands, warranties, damages, causes of action or rights of County relating to Assignor and all such rights are reserved by County and shall remain notwithstanding this Assignment, to the extent they arise from or are related to the terms, conditions, covenants, obligations, liabilities and duties of Assignor existing prior to the Effective Date of this Assignment.

Section 4. Hold Harmless and Indemnity. In the event County is made a party to an action between Assignee and Assignor, or involving any third party, arising out of this Assignment, the Assignee and the Assignor shall each agree to indemnify, defend and hold County, its elected officials, employees and agents, harmless from and against any such claim, demand, cause of action, economic losses, damages, and costs and expenses (including reasonable legal fees and costs of investigation) that arise from, out of, or as a result of, this Assignment.

Section 5. Appointment. Assignor hereby irrevocably appoints Assignee, its successors, and assigns, as the attorney and agent of Assignor, in Assignor's name and stead, to enforce the provisions of the Agreement for matters arising or accruing after the Effective Date.

Section 6. Acknowledgement. By signing below, the County agrees, subject to the terms of this Assignment, to Assignor's assignment of all of its rights and obligations under the Agreement beginning on the Effective Date. The County acknowledges that Assignor and Assignee are relying on this consent in connection with this Assignment. Assignor acknowledges its continuing responsibilities as set forth in this Assignment.

Section 7. Notices. Beginning on the Effective Date, any and all notices required under the Agreement will be delivered to Assignee, at:

ASSIGNOR: HIGHLAND DUNES ASSOCIATES PROPERTY LLC
500 Boylston Street, Suite 2010
Boston, MA, 02116
Attn: Legal
E-Mail: legal@freeholdcm.com

Copy To: Clifford I. Hertz, Office Managing Partner
360 S. Rosemary Ave., Suite 1410
West Palm Beach, FL 33401
E-Mail: Clifford.hertz@nelsonmullins.com

ASSIGNEE: LENNAR HOMES, LLC
3931 RCA Blvd., Suite 3105
Palm Beach Gardens, Florida 33410
Attn: Michael Meyers, Vice-President
E-Mail: michael.meyers@Lennar.com

Copy To: Weiss, Handler & Cornwell, P.A.
2255 Glades Road, Suite 205E
Boca Raton, FL 33431
Attn: Henry B. Handler, Esq.
E-Mail: hbh@whcfla.com

COUNTY: David L. Ricks, P.E., Palm Beach County Engineer
Director of Engineering & Public Works Department
P.O. Box 21229
West Palm Beach, FL 33416-1229
E-Mail: DRicks@pbcgov.org

Copy To: Scott A. Stone, Asst. County Attorney II
Palm Beach County Attorney's Office
301 North Olive Ave., Suite 601
West Palm Beach, FL 33401
E-Mail: sastone@pbcgov.org

Section 8. Consent. The County's consent is effective when this Assignment has been executed by all parties and approved by the Board of County Commissioners.

Section 9. Authority. The undersigned signatory for Assignor does hereby attest and affirm that he/she has the current lawful authority to execute this Assignment on behalf of the Assignor and that the assignment is not made with intent to hinder or defraud creditors or interfere with lawful rights of other persons or entities, or for any other unlawful purpose.

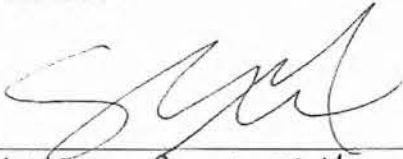
Section 10. Ratification. Except as expressly modified herein, the Agreement is hereby ratified, confirmed and remains in full force and effect.

Section 11. Governing Law. This Assignment shall be governed by and interpreted in accordance with the laws of the State of Florida without giving effect to its conflict of laws principles.


IN WITNESS WHEREOF, the undersigned parties hereto have executed this Assignment to be executed as of the day first above written.

WITNESS:

ASSIGNOR: HIGHLAND DUNES ASSOCIATES PROPERTY LLC, a Delaware limited liability company



Print Name: Sarah J. Mann

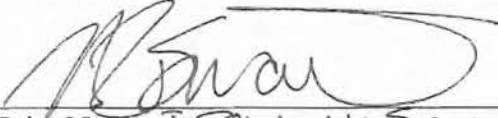
By: 
Jesse R. Baker, Authorized Signatory




Print Name: Griffin Boulter

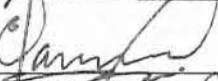
WITNESS:

ASSIGNEE: LENNAR HOMES, LLC, a Florida limited liability company



Print Name: J. Richelle Smart

By: 
JEFF ALEXANDER
AUTHORIZED AGENT



Print Name: Claudia Correa

ATTEST:

COUNTY:
PALM BEACH COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA BY AND THROUGH ITS BOARD OF COUNTY COMMISSIONERS

JOSEPH ABRUZZO, CLERK OF THE CIRCUIT COURT & COMPTROLLER

By: _____
Deputy Clerk

By: _____
Robert S. Weinroth, Mayor

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND CONDITIONS

By: _____
Assistant County Attorney

By: 
Traffic Division Director

EXHIBIT A
LEGAL DESCRIPTION

PARCEL 2:

THAT PART OF THE SOUTH 360 FEET OF SECTION 21, TOWNSHIP 43 SOUTH, RANGE 40 EAST, PALM BEACH COUNTY, FLORIDA; LESS THE NORTH 240 FEET OF THE SOUTH 360 FEET OF SAID SECTION 21; ALSO THE NORTH 50 FEET OF THE SOUTH 120 FEET OF THE EAST 220 FEET OF SAID SECTION 21.

TOGETHER WITH:

PARCEL 3:

THAT PART OF THE SOUTH 360 FEET OF THE WEST 780 FEET OF SECTION 22, TOWNSHIP 43 SOUTH, RANGE 40 EAST, PALM BEACH COUNTY, FLORIDA; LESS THE NORTH 290 FEET OF THE SOUTH 360 FEET OF THE WEST 780 FEET OF SAID SECTION 22.

ALSO TOGETHER WITH:

PARCEL 4:

THAT PART OF THE WEST 780 FEET OF SECTION 27, TOWNSHIP 43 SOUTH, RANGE 40 EAST, PALM BEACH COUNTY, FLORIDA.

ALSO TOGETHER WITH:

PARCEL 5:

ALL OF SECTION 28, TOWNSHIP 43 SOUTH, RANGE 40 EAST, PALM BEACH COUNTY, FLORIDA.

ALSO TOGETHER WITH:

PARCEL 8:

ALL OF SECTION 33, TOWNSHIP 43 SOUTH, RANGE 40 EAST, PALM BEACH COUNTY, FLORIDA, LYING NORTH OF STATE ROAD 80 RIGHT-OF-WAY.

ALSO TOGETHER WITH:

PARCEL 9:

THAT PART OF THE WEST 780 FEET OF SECTION 34, TOWNSHIP 43 SOUTH, RANGE 40 EAST, PALM BEACH COUNTY, FLORIDA, LYING NORTH OF STATE ROAD 80 RIGHT-OF-WAY.

LESS AND EXCEPTING FROM PARCELS 2, 5 AND 8, THAT PORTION WHICH LIES WITHIN THAT STRIP OF LAND WHICH LIES 46.00 FEET EAST OF, AS MEASURED AT RIGHT ANGLES TO, THE EASTERLY RIGHT-OF-WAY LINE OF THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT L-8 CANAL AS PER THE RIGHT-OF-WAY MAP FOR SAID L-8 CANAL, DWG "L-8-1", AND DATED MAY 8, 1950, AND PROVIDED TO THIS OFFICE BY THE SOUTH FLORIDA WATER MANAGEMENT DEPARTMENT OF SURVEY.

TOTAL SITE ACREAGE = 1209.96 ACRES, MORE OR LESS.